Supreme Court, U.S.
FILED
MAY 17 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1567

In the Supreme Court of the United States

OCTOBER TERM, 1988

DOLORES MARIA CAMARENA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WILLIAM C. BRYSON
Acting Solicitor General
EDWARD S.G. DENNIS, JR.
Assistant Attorney General
JOSEPH C. WYDERKO
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

BEST AVAILABLE COPY

QUESTION PRESENTED

Whether knowledge of the statutory prohibition against structuring financial transactions with domestic financial institutions for the purpose of evading the reporting requirements of 31 U.S.C. 5313(a) is an essential element of the offense under 31 U.S.C. 5322 and 5324(3) (1982 & Supp. V 1987).

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Statement	1
Argument	4
Conclusion	8

TABLE OF AUTHORITIES

Cases:

Liparota v. *United States*, 471 U.S. 419 (1985) 6

Statutes and regulation:

Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, Tit. I, Subtit. H, 100 Stat. 3207-18 (Money Laundering Control Act of 1986):

§§ 1351-1367, 100 Stat. 3207-18 to 3207-39 5

§ 1354, 100 Stat. 3207-22 5

7 U.S.C. 2024(b)(1) 6

31 U.S.C. 5313(a) 2, 6

31 U.S.C. 5322 (1982 & Supp. V 1987) 2, 5

31 U.S.C. 5324 (Supp. V 1987) 3, 4, 5, 7

31 U.S.C. 5324(3) (Supp. V 1987) 2, 4, 6, 7

31 C.F.R. 103.22(a) 2

Miscellaneous:

S. 2683, 99th Cong., 2d Sess. (1986) 7

S. Rep. No. 433, 99th Cong., 2d Sess. (1986) 7

In the Supreme Court of the United States

OCTOBER TERM, 1988

No. 88-1567

DOLORES MARIA CAMARENA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-9) is unpublished, but the decision is noted at 863 F.2d 880 (Table).

JURISDICTION

The judgment of the court of appeals was entered on December 6, 1988. A petition for rehearing was denied on January 19, 1989 (Pet. App. 10-11). The petition for a writ of certiorari was filed on March 20, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Texas, petitioner was convicted on 58 counts of unlawfully structuring currency transac-

tions with domestic financial institutions for the purpose of evading the reporting requirements of 31 U.S.C. 5313(a), in violation of 31 U.S.C. 5322 and 5324(3) (1982 & Supp. V 1987). She was sentenced to concurrent terms of five years' imprisonment on all counts, with all but six months of the sentence suspended, to be followed by five years' unsupervised probation. Petitioner was also fined $250,000. The court of appeals affirmed (Pet. App. 1-9).

1. The evidence at trial is summarized in the government's brief filed in the court of appeals. It showed that on November 14, 1986, petitioner opened a money market account at MBank Vista Hills in El Paso, Texas, where she had also opened a personal checking account the month before. On two occasions, petitioner attempted to deposit cash totaling in excess of $10,000 by depositing part of the cash into her money market account and part into her checking account. When she was informed by a bank employee on each occasion that the bank would file a Currency Transaction Report (CTR) because the combined deposits exceeded $10,000, petitioner withdrew the deposit to her checking account and made a deposit of less than $10,000 to her money market account alone.[1] Between February 18 and April 24, 1987, petitioner made 29 deposits, all in cash, to the money market account. The individual deposits ranged in amounts from $7000 to $9900; the total amount deposited during that period in the MBank accounts was $274,350. Gov't C.A. Br. 7-9.

On February 18, 1987, petitioner and her mother opened a second money market account, this time at Texas Commerce Bank in El Paso. While opening the account,

---

[1] Under 31 U.S.C. 5313(a) and 31 C.F.R. 103.22(a), a financial institution is required to file a CTR whenever a customer engages in a currency transaction in excess of $10,000.

petitioner asked a bank employee if she were correct in believing that the bank did not have to file a CTR with the government when a customer deposited less than $10,000. The bank employee responded that petitioner was correct. As with her MBank account, petitioner made 29 cash deposits to the Texas Commerce Bank account between February 18 and April 24, 1987. The individual deposits ranged in amount from $7000 to $9900; the total amount deposited in that period to the Texas Commerce Bank accounts was $271,550. Gov't C.A. Br. 10-13.

2. Petitioner testified in her own defense at trial. She admitted that she knew about the banks' obligation to file CTRs for transactions in excess of $10,000. She also admitted that she intentionally deposited amounts less than $10,000 in her accounts in order to avoid having the banks file CTRs for her transactions. Petitioner's defense was that she did not know, and was never informed by bank personnel, that 31 U.S.C. 5324 (Supp. V 1987) prohibited her from structuring her transactions to evade the banks' currency transaction reporting requirements. See Pet. 7.

To support her defense, petitioner asked the district court to instruct the jury that the government was required to prove as an element of the offense that she had acted with knowledge of the prohibition against structuring under Section 5324 and with the specific intent to evade that law. Gov't C.A. Br. Add. D3. The district court refused that instruction. Instead, the district court charged the jury that the government was only required to prove that petitioner had "acted willfully, that is, that she acted with knowledge of the currency reporting requirements and with the specific intent to evade those requirements." The court explained that "[t]o evade or attempt to evade the reporting requirements * * * means the [petitioner] acted voluntarily and intentionally and with the specific intent to knowingly keep from the bank sufficient infor-

mation to prepare and file * * * the currency transaction report." "In other words," the court pointed out, "the evasion or attempted evasion must be made with the bad purpose of seeking to prevent the bank from making a written report of the currency transactions." Gov't C.A. Br. Add. C1-C2.

3. The court of appeals affirmed in an unpublished opinion (Pet. App. 1-9). The court rejected (*id.* at 2-7) petitioner's contention that the government was required to prove as an essential element of the offense that she knew of the specific prohibition against structuring in Section 5324(3). Based on the text and legislative history of that section, the court concluded that "the required specific intent is proved by evidence that [petitioner] knew of the bank's legal obligation to report transactions in excess of $10,000 and acted with the bad purpose of defeating the law rather than for some innocent purpose" (Pet. App. 6). The court explained that petitioner was accordingly entitled only "to a jury instruction that the government must prove that she acted with a bad purpose: that she knew of the reporting requirement and acted with the purpose of defeating it" (*ibid.*).[2]

ARGUMENT

Petitioner renews her contention (Pet. 10-30) that knowledge of the specific prohibition against structuring in 31 U.S.C. 5324(3) (Supp. V 1987) is an essential element of the offense under that section. The court of appeals correctly rejected that contention.

---

[2] The court of appeals also rejected the contention that Section 5324 is unconstitutionally vague (Pet. App. 7), as well as petitioner's challenge to the sufficiency of the evidence, to a second jury instruction, and to the prosecutor's closing argument (*id.* at 7-9). The petition does not present those issues.

Section 5324 was enacted as part of the Money Laundering Control Act of 1986, which was included as Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, §§ 1351-1367, 100 Stat. 3207-18 to 3207-39. Section 1354 of the Act, 100 Stat. 3207-22, entitled "Structuring Transactions to Evade Reporting Requirements Prohibited," created the new Section 5324, which provides, in pertinent part, as follows:

> No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction –
>
> (1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);
>
> (2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or
>
> (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

The penalties for violations of Section 5324 are set forth in 31 U.S.C. 5322 (1982 & Supp. V 1987), which provides in pertinent part:

> (a) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) shall be fined not more than $250,000, or imprison[ed] not more than five years, or both.
>
> (b) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed

> under section 5315), while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 10 years, or both.

By its plain language, the statute prohibits the willful evasion of the reporting requirements of Section 5313(a) by any of several means, including by structuring transactions. Thus, the only specific intent required is the intent to evade the reporting requirements. The statute does not require the government to prove that a defendant knew that the particular means she chose for violating the statute was expressly prohibited.

This Court's decision in *Liparota* v. *United States*, 471 U.S. 419 (1985), on which petitioner relies (Pet. 16-18), does not require a different result. The question presented in *Liparota* was what mental state, if any, the government was required to prove in a prosecution for unlawful acquisition or possession of food stamps under 7 U.S.C. 2024(b)(1) (471 U.S. at 423). The Court held that the government was required to prove that the defendant knew that he had acquired or possessed the food stamps in a manner that was not authorized by the statute or regulations (*id.* at 433). The Court made clear, however, that the government need not prove that the defendant knew of the specific regulations governing food stamp acquisition or possession (*id.* at 434).

In the present case, the court of appeals did not dispense with proof of mens rea as an element of the offense under Section 5324(3). To the contrary, the court held that the government was required to prove (1) that petitioner knew she was evading the reporting requirements and (2) that she deliberately structured her transactions for the purpose of evading those requirements (Pet. App. 6). Con-

sistent with *Liparota*, the court of appeals merely concluded that it was not necessary to show that petitioner also knew of the specific anti-structuring provision in Section 5324(3).

Moreover, as the court of appeals explained (Pet. App. 5), the legislative history of Section 5324 confirms that the government need only prove a specific intent to evade the reporting requirements. The Senate Committee on the Judiciary, reporting favorably on the identical provision in S. 2683, 99th Cong., 2d Sess. (1986), an earlier version of the money laundering bill, addressed the very activity with which petitioner was charged, and made clear that only a specific intent to evade the reporting requirements must be proved (S. Rep. No. 433, 99th Cong., 2d Sess. 22 (1986) (emphasis added)):

> [T]he proposed amendment would create the offense of structuring a transaction to evade the reporting requirements, without regard to whether an individual transaction is, itself, reportable under the Bank Secrecy Act. For example, a person who converts $18,000 in currency to cashier's checks by purchasing two $9,000 cashier's checks at two different banks or on two different days *with the specific intent that the participating bank or banks not be required to file Currency Transaction Reports for those transactions*, would be subject to potential civil and criminal liability. A person conducting the same transactions for any other reasons or a person splitting up an amount of currency that would not be reportable if the full amount were involved in a single transaction (for example, splitting $2,000 in currency into four transactions of $500 each), would not be subject to liability under the proposed amendment.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

WILLIAM C. BRYSON
Acting Solicitor General
EDWARD S.G. DENNIS, JR.
Assistant Attorney General
JOSEPH C. WYDERKO
Attorney

MAY 1989

U.S. GOVERNMENT PRINTING OFFICE: 1989—241 699/00258